

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 78, "Ginseng Harvesting and Sale," Iowa Administrative Code, and to adopt a new Chapter 78 with the same title.

The proposed new chapter better defines wild and cultivated ginseng, green and dry ginseng, and those persons permitted to harvest and sell ginseng, and prohibits the harvesting or planting of ginseng on state-owned and state-managed lands. The new chapter also clarifies the fees charged for permits issued under these rules, the restrictions and prohibitions for harvesting wild ginseng, and the record-keeping and reporting requirements related to ginseng transactions.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 3, 2009. Such written materials should be directed to Mimi Habhab, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail [Mimi.Habhab@dnr.iowa.gov](mailto:Mimi.Habhab@dnr.iowa.gov). Persons who wish to convey their views orally should contact Mimi Habhab at (515)281-5034 or at Ms. Habhab's office on the fourth floor of the Wallace State Office Building.

Also, the Department will hold a public hearing utilizing the Iowa Communications Network (ICN) on February 4, 2009, at 6 p.m. The ICN locations at which the public may participate are as follows:

State Historical Building  
Room #157 - Heritage Classroom C  
600 East Locust  
Des Moines

Iowa Western Community College  
Room #1122  
700 College Road  
Council Bluffs

Eastern Iowa Community College District  
Room #300  
326 West 3rd Street  
Davenport

Decorah Public Library  
202 Winnebago Street  
Decorah

Central Community Jr-Sr High School  
Room Number: 119  
400 First Street NW  
Elkader

St. Edmund High School  
501 N 22nd St., Room 101  
Fort Dodge

Clayton Ridge Middle School  
502 W. Watson  
Garnavillo

Iowa City High School  
1900 Morningside Drive  
Iowa City

North Iowa Area Community College  
Room #119  
500 College Drive  
Mason City

Hawkeye Community College  
Tama Hall  
1501 E. Orange Road  
Waterloo

Southeastern Community College  
Trustee Hall, Room #528  
1500 West Agency  
West Burlington

At the public hearing, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code section 456A.24(11).

The following amendment is proposed.

Rescind 571—Chapter 78 and adopt the following **new** chapter in lieu thereof:

CHAPTER 78  
GINSENG HARVESTING AND SALE

**571—78.1(456A) Purpose.** The purposes of these rules are to establish a program for the harvesting and sale of American Ginseng subject to the Convention on International Trade in Endangered Species (CITES) of wild fauna and flora; to provide for the time and conditions for harvesting the plant; and to provide requirements for the registration of growers, dealers and exporters, the records kept by dealers and exporters, and the certification of a legal taking of a threatened or endangered species. The goal of the department's program is to ensure that American Ginseng, a slow-growing plant with increased demand due to its medicinal and commercial value, remains a sustainable resource in the state of Iowa.

**571—78.2(456A) Scope.** These rules shall apply to all persons harvesting, cultivating and dealing in American Ginseng in Iowa. However, these rules are not intended to apply to the trade or trafficking of

American Ginseng that has been lawfully obtained and been processed, prepared, packaged or labeled in a manner intended for its final consumptive use.

**571—78.3(456A) Definitions.** All words and phrases used in these rules shall have their ordinary and customary meaning, except that the following words and phrases shall be defined as follows:

*“Controlled conditions”* means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations, such as potting, bedding, or protection from weather and artificial or natural shade or light.

*“Cultivated ginseng”* means ginseng that is nurtured, artificially propagated or maintained under controlled conditions from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that has been derived from cultivated parental stock.

*“Cultivated parental stock”* means the ensemble of plants grown under controlled conditions that are used for reproduction and must be maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild.

*“Cutting”* or *“division”* means a plant grown from the root, stem, or leaf of another plant and is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

*“Dealer”* means any person who deals in ginseng, which includes without limitation buying, selling, purchasing, holding, brokering, billing for, bartering, trading or otherwise receiving payment for wild or cultivated ginseng in Iowa, for the purpose of selling or otherwise transacting wild or cultivated ginseng. The term “dealer” includes any person, including without limitation a harvester, who sells ginseng to any person other than a dealer licensed pursuant to these rules or lawfully licensed in another state.

*“Dealer’s permit”* means a permit issued to a dealer by the department under these rules.

*“Department”* means the Iowa department of natural resources.

*“Director”* means the director of the Iowa department of natural resources or a designee.

*“Ginseng”* means all parts of the American Ginseng (*Panax quinquefolius*) plant, including without limitation roots, leaves and seeds, which may be cultivated or wild. “Ginseng,” however, for purposes of these rules, does not mean those parts of the American Ginseng plant that have been processed.

*“Green ginseng”* means a root of wild ginseng from which the moisture has not been removed by drying. For the purposes of these rules, the amount of dried ginseng root which can be derived from green ginseng root shall be calculated using a ratio of three and three-tenths to one (3.3:1) by weight.

*“Grower”* means a person who grows cultivated ginseng for the purpose of selling the ginseng.

*“Grower’s permit”* means a permit issued under these rules to a grower.

*“Harvester”* means any person who harvests, possesses, transports, cuts, gathers, destroys, digs or uproots wild ginseng for the purpose of selling the ginseng or for personal use.

*“Harvester’s permit”* means a permit issued under these rules to a harvester.

*“Nonresident”* means a person other than a resident as defined by Iowa Code section 483A.1A.

*“Permits”* means dealer’s permits, grower’s permits and harvester’s permits issued under these rules.

*“Resident”* means a resident as defined by Iowa Code section 483A.1A.

*“Wild ginseng”* means an unprocessed plant, dry root or live root, seed or other part of ginseng, which is growing in or has been collected from its native habitat, including ginseng plants which have arisen from a cultivated seed that is planted in the wild, or which have been transplanted from a cultivated setting into the native habitat.

**571—78.4(456A) Season for legal harvest.** The season for legally harvesting ginseng is September 1 to October 31.

**571—78.5(456A) General prohibitions.**

**78.5(1) Harvest.** From November 1 through the following August 31, no person shall harvest, dig, cut, uproot, gather, intentionally disturb, or destroy ginseng, whether the ginseng is wild or cultivated ginseng.

**78.5(2) Sale.** A person shall not sell ginseng from April 1 through August 31.

**78.5(3) Sale and possession of green ginseng.** A person shall not possess or transact business in green ginseng from November 21 through August 31, unless otherwise provided for by these rules.

**78.5(4) State-owned and state-managed lands.** In an effort to conserve and protect native stands of wild ginseng, the introduction of nonnative ginseng stock on state-owned or state-managed lands under the jurisdiction of the commission is prohibited, except in narrow circumstances. As such, a person shall not, at any time, possess, harvest, dig, cut, uproot, gather, plant, propagate, intentionally disturb or destroy ginseng or ginseng seed on state-owned or state-managed lands under the jurisdiction of the commission. Nothing in this chapter shall prohibit the department from taking measures on state-owned or state-managed lands under the jurisdiction of the commission to conserve and protect native wild ginseng, which may include without limitation planting and possessing seeds.

**78.5(5) Certificate of origin.** No ginseng dug, harvested or purchased outside the borders of Iowa which is not accompanied by a valid certificate of origin pursuant to rule 571—78.9(456A) shall be transported into or be in the state of Iowa lawfully.

**571—78.6(456A) Ginseng permits.** The department shall issue a grower's permit or dealer's permit upon receipt of a signed and complete application. An application shall be submitted on the form provided by the department, and payment of the appropriate fee, if applicable, shall be included with the application. Harvester's permits are available for sale through the department's electronic licensing system for Iowa, which may be accessed through license agents throughout the state or on the department's Web site. The department shall not issue a permit if the department determines that the permit will be detrimental to the survival of ginseng or will otherwise be in contravention of the laws of this state or applicable federal laws. A person shall not carry, possess or use any other person's permit issued pursuant to these rules, except as specifically provided by these rules.

**78.6(1) Grower's permits.**

*a.* A person must obtain a permit from the department to legally grow cultivated ginseng. There is no fee for the permit, except for the charge associated with the electronic licensing system used to issue the permit.

*b.* An application for a grower's permit shall be made on the form provided by the department, shall be complete to be considered, and shall be executed by the person seeking the grower's permit.

*c.* A grower's permit shall be valid for five years from the date of issuance.

*d.* An application for permit renewal must be filed with the department within 60 days of expiration of the existing permit.

**78.6(2) Dealer's permits.**

*a.* A dealer in Iowa must have a valid dealer's permit issued by the department. A dealer's paid employees and family members who work at a dealer's primary place of business as identified on the dealer's permit may operate legally under the dealer's permit of the dealer. For purposes of this subrule, family members include a dealer's spouse, domestic partner, parents, siblings, and children.

*b.* An application for a dealer's permit shall be made on the form provided by the department, shall be complete to be considered, shall be executed by the person seeking the dealer's permit, and shall be accompanied by a \$250 permit fee for residents and a \$500 permit fee for nonresidents. In addition, there shall be an additional charge associated with the electronic licensing system used to issue the permit, if applicable. The department's issuance of the permit may take in excess of 60 days to complete.

*c.* A dealer's permit shall be valid from September 1 until August 31 of the following year.

*d.* A dealer's permit must be shown to the department when the department is certifying ginseng and must be shown to harvesters or other dealers when the dealer is buying ginseng.

**78.6(3) Harvester's permits.**

*a.* Any person who harvests wild ginseng must have a valid harvester's permit issued by the department and shall produce such permit upon the request of the department while the person is engaged in harvesting activities, including the selling of the harvested ginseng.

*b.* An application for a harvester's permit shall be made on the form provided by the department, unless the harvester's permit is purchased through the department's electronic licensing system for Iowa,

and shall accompanied by a fee of \$35 for residents and \$65 for nonresidents. In addition, there shall be an additional charge associated with the electronic licensing system used to issue the permit. The application and subsequent harvester's permit shall be signed by the applicant.

c. A harvester's permit shall be valid from September 1 through March 15 of the following year.

d. A harvester who has a harvester's permit may sell wild ginseng from September 1 through March 15 of the following year.

e. A harvester with a valid harvester's permit may retain no more than four ounces of dry wild ginseng, or equivalent amount of green ginseng or combination thereof, for personal consumption for one year beyond the expiration date of the permit. All wild ginseng possessed pursuant to this paragraph shall be for the harvester's personal use only and may not be lawfully sold.

f. No person may sell, barter or otherwise offer for sale any ginseng that has been unlawfully collected, obtained or possessed in violation of this chapter, the Code of Iowa, or the Code of Federal Regulations.

**78.6(4) Duplicate permits.** A duplicate grower's permit, harvester's permit or dealer's permit may be issued upon application to the department and the payment of \$5, plus any charges assessed to use the electronic licensing system to issue the duplicate permit, if applicable.

**571—78.7(456A) Dealers—record keeping.**

**78.7(1) Contents of records.** Each permitted ginseng dealer shall keep individual, accurate, legible and complete records of each ginseng transaction. The records shall be on forms prescribed by the department, which shall provide a reasonable number of these forms at no cost to the dealer. The dealer's record of each ginseng transaction shall include:

- a. The date of transaction; and
- b. The name and address of the buyer or seller, whichever is applicable for the transaction; and
- c. The harvester's permit number or dealer's permit number, if a dealer is buying ginseng in the transaction; and
- d. A description of the ginseng transacted, including the weight of the ginseng transacted, as determined as though the ginseng is dried, and whether the ginseng is dried or green; and
- e. The name of the county or counties where the ginseng was harvested if the ginseng is purchased from a harvester; and
- f. A copy of the ginseng's certificate of origin, signed by the seller, if applicable; and
- g. The date of harvest for the ginseng bought or sold; and
- h. Any additional information as requested by the department and included on the department's form.

**78.7(2) Monthly reporting.** Each dealer shall submit to the department copies of all records required by subrule 78.7(1) on a monthly basis, no later than the fifteenth day of each month.

**78.7(3) Annual reporting.** Each dealer shall file an annual report with the department by April 15. The annual report shall be filed on forms provided by the department and shall include the following information:

- a. A summary of all transactions that have occurred in Iowa from September 1 through March 31 of the following year; and
- b. An inventory of any roots remaining in the dealer's possession in Iowa as of April 1, including each root's certified weight and designation as either wild ginseng or cultivated ginseng, or a statement that the dealer has no roots remaining in the dealer's possession in Iowa as of that date.

Any certification regarding a root's weight as required by this subrule shall be completed through the department or its agents at locations designated by the department, upon appointment.

**78.7(4) Records retention.** All records required by this rule shall be kept by the dealer for a period of three years after the expiration of the dealer's permit.

**571—78.8(456A) Dealer locations.**

**78.8(1) *Generally.*** Ginseng dealers shall transact business only at the location specified on the dealer's permit or at the place of business specified on the permit of any other dealer who holds a dealer's permit in Iowa and is involved in the transaction.

**78.8(2) *Location permits.*** A dealer who wishes to transact business at a location other than the locations provided for in subrule 78.8(1) may obtain a location permit from the department. Each location permit shall be valid only for the location specified on the location permit and shall entitle the dealer to operate at that location in addition to the location specified on the corresponding dealer's permit. The department shall, upon application and the payment of the applicable location permit fee, furnish a location permit to the dealer. The location permit fee shall be \$5 for residents and \$50 for nonresidents, plus any charge assessed for use of the electronic licensing system to issue the permit, if applicable.

**78.8(3) *Duplicate location permits.*** A duplicate location permit may be issued upon application to the department and the payment of \$5, plus any charge assessed for use of the electronic licensing system to issue the duplicate permit, if applicable.

**571—78.9(456A) Certificates of origin.**

**78.9(1) *Shipments.*** Every shipment of ginseng to a location outside the state of Iowa by a grower, harvester or dealer shall be accompanied by a certificate of origin, or shipping certificate, which certifies that the ginseng was taken lawfully.

*a.* The department will issue a certificate of origin for cultivated ginseng to a grower or dealers upon application by the permit holder and based upon the completeness and sufficiency of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

*b.* The department will issue a certificate of origin for wild ginseng to a harvester upon application by the permit holder and based upon the completeness and sufficiency of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

*c.* The certificate of origin for wild ginseng will be issued by the department and its agents after the root has been weighed and certified by the department or its agents at one of the locations designated by the department, upon appointment.

*d.* A grower, harvester, or dealer seeking a certificate of origin must have a valid grower's permit, harvester's permit, or dealer's permit, respectively, and must present the permit to receive a certificate of origin.

**78.9(2) *Fees.*** The department shall issue a certificate of origin free to any grower or dealer who lawfully possesses a valid grower's permit or dealer's permit, respectively, and for a fee of \$5 for each certificate to any harvester who lawfully possesses a valid harvester's permit.

**78.9(3) *Compliance.*** Certificates of origin shall be issued only to permit holders who have complied with the requirements of this chapter, including without limitation requirements regarding plant size for wild ginseng.

**78.9(4) *Wild ginseng originating in another state.***

*a.* No person may ship out of this state to a foreign country wild ginseng that originates in another state or foreign country unless the wild ginseng is accompanied by a valid certificate of origin issued by that other state or foreign country. No person may ship out of this state wild ginseng that originates in another state under a certificate of origin issued under this chapter.

*b.* No resident may import for purposes of dealing wild ginseng that originates in another state unless the wild ginseng is accompanied by a valid certificate of origin from the other state. Original certificates of origin shall remain with the wild ginseng at all times.

*c.* If a resident dealer receives wild ginseng that originated in another state and if a certificate of origin issued by that state does not accompany the wild ginseng, the dealer shall return the wild ginseng to the sender within 30 days after its receipt.

*d.* A dealer shall maintain a copy of the certificate of origin with the record of transaction.

e. It shall be lawful for any person to have in possession any wild ginseng lawfully harvested or purchased outside the state and lawfully brought into the state so long as the person possesses a valid certificate of origin for the wild ginseng.

**571—78.10(456A) Inspection.**

**78.10(1)** At any time upon request, any permit issued under this chapter shall be made available to the department, director, officer appointed by the department, peace officer, or, in the case of a harvesting permit, the owner in person in lawful control of the land upon which the licensee may be harvesting wild ginseng. Failure of a person to carry or refusal to show or exhibit a valid permit while engaged in or presumed to be engaged in the harvesting, growing or dealing of ginseng in Iowa shall be a violation of this chapter. However, a person charged with violating these rules shall not be convicted if the person produces to the department or to a court officer, within a reasonable time, a permit issued to that person and valid when the person was charged with a violation of these rules. Failure to make such permit available is a violation of these rules.

**78.10(2)** Any records required by this chapter to be maintained or submitted shall be produced for inspection upon request of the department, director, officer appointed by the department, or peace officer. Failure to maintain records or to submit reports as required by these rules is a violation of these rules.

**78.10(3)** Any person or dealer who has in possession any ginseng or part thereof shall upon request of the department, director, any officer appointed by the department, or peace officer show it to the department, director or officer; a refusal to do so is a violation of this chapter.

**571—78.11(456A) Restrictions and prohibitions for harvesting wild ginseng.**

**78.11(1)** Every person shall have in possession a valid, department-issued permit to harvest wild ginseng for the current harvest season when harvesting, cutting, uprooting, gathering, destroying, possessing or transporting wild ginseng.

**78.11(2)** No person shall harvest a plant unless the plant possesses three or more true leaves or prongs and a flowering or fruiting stalk with red berries. For purposes of this rule, “true leaves or prongs” means compound leaves that include five leaflets consisting of three large leaflets and two small leaflets. If, after a person removes a plant with the requisite leaves or prongs as described above, it is determined the root has less than five internodes, or root sections containing a stem scar, on the plant’s rhizome, the person shall return the plant to the soil and make best efforts to return the plant and the surrounding area to their condition prior to harvest of the plant. In no event shall a person harvest or possess a wild ginseng root unless the root has at least five internodes, or root sections containing a stem scar, on the plant’s rhizome.

**78.11(3)** When a person harvests wild ginseng, the entire plant, except the fruit and seeds, shall be retained with the plant until the plant is taken to the harvester’s residence or place of business, as identified in the harvester’s permit.

**571—78.12(456A) Additional restrictions and prohibitions for wild ginseng.**

**78.12(1) Seeds.**

a. All persons harvesting wild ginseng shall plant all seeds collected from such plants within 100 feet of the parent plant.

b. A person shall use no other tool than the person’s finger to plant seeds from wild ginseng and shall push each seed to a depth of no more than two inches into the soil.

c. A person shall not possess or transport seeds of wild ginseng more than 100 feet from the site of the parent plant.

**78.12(2) Dealing.**

a. A person shall not purchase or sell wild ginseng if the person knows or should have known that the ginseng was harvested illegally.

b. A dealer shall not purchase wild ginseng without inspecting the permit of the harvester. A dealer shall not purchase wild ginseng if the dealer knows or should have known that the harvester has violated this chapter.

c. A person shall not buy, deal, purchase or otherwise transact business involving seeds from wild ginseng.

**571—78.13(456A) Compliance with laws.** A person shall not violate any state, federal or local laws in harvesting, dealing or shipping ginseng.

**571—78.14(456A) Violations of this chapter.**

**78.14(1)** A person violating this chapter shall be subject to a schedule fine pursuant to Iowa Code section 805.8B, subsection 4, and permit suspension, modification and revocation pursuant to 571—78.17(456A).

**78.14(2)** Separate offense. Each ginseng plant or part thereof, including wild ginseng, unlawfully harvested, dealt, or shipped shall be a separate offense. More than one person per plant may be guilty of violating this chapter.

**78.14(3)** Materials determined by the department's law enforcement personnel to be contraband or to have been taken in violation of this chapter may be seized and disposed of in conformance with Iowa Code chapter 809.

**571—78.15(456A) Possession.** When a person is in possession of wild ginseng, including the shipping or transporting of wild ginseng, and a container includes one or more parts of wild ginseng that are unlawful, the entire contents of the container shall be deemed unlawful.

**571—78.16(456A) Valuation.** The value of ginseng seized in violation of these rules shall be based on the current market value, as determined by the department.

**571—78.17(456A) Suspension, modification or revocation of permits.** Any permit issued pursuant to this chapter may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the permit holder has violated any provision of this chapter or determines that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permit holder may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

**571—78.18(456A) Reciprocity.** Nonresident harvesters, growers and dealers from states that prohibit Iowa harvesters, growers and dealers to lawfully operate in their states are not eligible for permits issued by the department.

These rules are intended to implement Iowa Code section 456A.24(11).